

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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ROBERT EMERSON,

Civil No. 07-4272 (JRT/JJK)

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner  
of Social Security,

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Defendant.

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Randall J. Fuller, **MIDWEST DISABILITY, P.A.**, 408 Northdale Boulevard, Minneapolis, MN 55448, for plaintiff.

Lonnie F. Bryan, Assistant United States Attorney, **OFFICE OF THE UNITED STATES ATTORNEY**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, for defendant.

Plaintiff Robert Emerson filed this action on October 17, 2007, seeking review of a decision by the Social Security Administration. After Emerson failed to serve defendant Michael J. Astrue, the Commissioner of Social Security, within 120 days of filing his complaint, Astrue moved to dismiss this action without prejudice for lack of prosecution. *See Fed. R. Civ. P. 4(m).* Emerson did not respond to Astrue's motion, and did not respond after United States Magistrate Judge Jeffrey J. Keyes issued an order to show cause why the case should not be dismissed. (*See Docket No. 7.*) On August 20, 2008, Magistrate Judge Keyes issued a Report and Recommendation recommending that Emerson's action be dismissed without prejudice. Emerson has not objected to that Report and Recommendation or otherwise responded to these proceedings since filing his

initial complaint. Accordingly, this Court adopts the Report and Recommendation of the Magistrate Judge and dismisses this action without prejudice.

**ORDER**

Based on the foregoing records, files, and proceedings herein, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation [Docket No. 9] is **ADOPTED**. IT **IS HEREBY ORDERED** that

1. Astrue's motion to dismiss [Docket No. 2] is **GRANTED**.
2. Emerson's complaint [Docket No. 1] is **DISMISSED WITHOUT PREJUDICE**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

DATED: December 15, 2008  
at Minneapolis, Minnesota.

s/ John R. Tunheim  
JOHN R. TUNHEIM  
United States District Judge